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cation No 3712 of 95

Date of decision: 25/01/96

For Approval and Signature:

Hon'ble MR.JUSTICE S.M.SONI

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MANOJ JARAMBHAI vs STATE OF GUJARAT

Appearance: NANAVATY ADVOCATES for Petitioner PUBLIC PROSECUTOR  
for Respondent No. 1 NOTICE NOT RECD BACK for Respondent No. 2

Coram : MR.JUSTICE S.M.SONI

ORAL JUDGEMENT

The learned advocate for the petitioner seeks permission to delete respondent no.2-original complainant. Permission granted.

Rule.

1. This is an application u/s 482 Cr.P.C. to quash and set aside the complaint registered at I-CR 225/95 with the Sardarnagar Police Station, Ahmedabad for the offence under section 366 of IPC. The allegation made by the complainant is that his minor daughter Kanta has been kidnapped by alluring her to be married by the present petitioner.

2. It is contended by the learned advocate for the petitioner that even from the facts stated in the complaint and the birth certificate produced in this case, the girl Kanta is not a minor one and therefore, no offence could be said to have been committed under section 366 of the IPC. It appears that since before the complaint, girl Kanta was residing with the present petitioner. The original complainant-the father of the girl filed a Habeas Corpus petition being Spl. Cri.Application oNo. 1408/95 before this Court and in the said petition when the girl was produced before the Couirt, she has stated before the court that she willingly resides with the accused and also desires to live with the accusede and go with the accused and accordingly the court on verifying about the majority of the girl, permitted her to go where-ever she likes . If the girl would have been a minor one the court would not have allowed her to go where-ever she likes because a minor is presumed to be in the icustody of the father. In view of these facts, girl Kanta is allowed to go where ever she liked can be said to be a conclusive proof of the fact that she is not a minor and she has stated that she had gone with the accused of her own and voluntarily. In view of these facts any of the allegations stated in the complaint cannot be looked into because these allegations can only be looked into if the girl is a minor one. Thus the facts stated in the complaint if read together with the order passed in the Habeas Corpus petition, no offence is made out and the petition is liable to be allowed. Copy of the order passed in Habeas Corpus petition is taken on record.

3. In the result the application is allowed. The offence registered at I CR 225/95 with the Sardarnagar Police Station is hereby quashed and set aside.

Rule is made absolute.

for correction, pl.see the original